


UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

FILED
JUL 07 2009

CLERK

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

JACOB DALE PAY PAY,

Defendant.

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CR 08-30115 (01)

ORDER AND OPINION

The defendant has filed a motion (Doc. 17) to suppress statements with a supporting memorandum (Doc. 18). The government filed a response (Doc. 26). United States Magistrate Judge Moreno conducted an evidentiary hearing on May 14, 2009. The defendant and counsel for both parties were present. I have conducted a *de novo* review of the transcript (Doc. 48) and all other documents and exhibits. I have listened to the tape recorded statement of the defendant.

The magistrate issued a report and recommendation (Doc. 47) after announcing his bench decision (Doc. 49). The recommendation is to grant in part and deny in part the motion to suppress. The magistrate listened to the testimony of the defendant, observed his demeanor, and found that he had little credibility as a witness, especially in comparison with the government witnesses who testified.

The defendant filed objections (Doc. 55) dealing with the recommendation as to the suppression motion which objections are without legal merit.

The report and recommendations should be adopted, the suppression motion denied in part, and the objections overruled.

Now, therefore,

IT IS ORDERED, as follows:

- 1) The motion (Doc. 17) to suppress the fact that the defendant took a polygraph examination and either failed or was deceptive in his responses is granted.
- 2) In all other respects, the motion (Doc. 17) is denied.
- 3) The report and recommendation (Doc. 47) is adopted.
- 4) The objections (Doc. 55) of the defendant to the report and recommendation are overruled.

Dated this 6th day of July, 2009.

BY THE COURT:

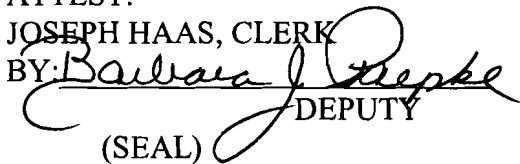


CHARLES B. KORNMANN
United States District Judge

ATTEST:

JOSEPH HAAS, CLERK

BY:


DEPUTY

(SEAL)